

a processor that associates with the customer identification information, a predetermined PPU from the database, and applies the predetermined PPU to a fuel sales transaction with the customer; and

a dispenser controller that reduces the street price posted on the dispenser to the predetermined PPU associated with the customer identification information prior to dispensing any fuel to the customer.

Please cancel claim 41 without prejudice to the Applicant.

REMARKS

Claims 29-38 and 40 are pending in the application. Claims 39 and 41 have been canceled herein. Independent claims 29, 37, 38, and 40 have been amended. For the convenience of the Examiner, a clean set of all pending claims, as currently amended, has been appended hereto.

Response to Arguments

In the Examiner's response to the Applicant's previous amendment, the Examiner stated that he completely disagrees with the Applicant's argument that "there is no teaching or suggestion in Stanley that the credits could be used to reduce the price-per-unit of a commodity such as fuel rather than discounting the total price of the fuel purchase." The Examiner then stated that price-per-unit (PPU) discounts are inherent in any system that issues discounts on gasoline. The Examiner cited page 2 of Phil Womack's article to support this contention. The Examiner then cited Stanley, page 2, paragraph 3 and Stanley, page 3, paragraph 4 to support the contention that Stanley anticipates providing a PPU discount on gasoline. The Applicant completely disagrees with all of the above, and respectfully requests that the Examiner reconsider his position based on the following explanation of the cited references.

Looking first at Phil Womack's article, an automated fueling station ("Sulli-Vend") for use by companies with a large number of drivers is described. The article states on page 2, paragraph 11:

For example, at Sulli-Vend's automated fueling stations, a driver would simply insert a coded card and a four-digit personal identification number to turn the pump on. The machine would then ask for an odometer reading and the type of gasoline desired. *Sulli-Vend, in turn, sends out weekly--with a two-cent-per-gallon discount--or monthly--with volume discounts--bills with detailed descriptions of each transaction.* (emphasis added).

It is clear from the above that the company drivers pump the gas at the PPU price that is posted on the dispenser. At the end of the week, Sulli-Vend then adds up the total number of gallons purchased by the company's drivers, and calculates a total discount equivalent to two cents per gallon. This total discount is then applied to a weekly bill that is sent to the company. Since this discount has to be calculated later, off line, it clearly suggests that PPU discounts are *not* inherent in systems that issue discounts on gasoline. In addition, the two-cent-per-gallon discount described by Womack is applied to the purchases after the gasoline has been delivered, and the total value of the discount can be calculated. The total value of the discount is then applied to the total purchase price to calculate a net amount due.

The Applicant has repeatedly emphasized to the Examiner during the prosecution of this application that the claimed invention does not function in this manner. The claimed invention instantly reduces the PPU price displayed on the dispenser as soon as the customer identification information is input, before any fuel is dispensed. The technology to perform this instant price reduction on the dispenser was developed by the Applicant, and none of the references cited give any indication that anyone else had developed this technology prior to the Applicant. Any reading of Womack as suggesting an instant PPU discount is drawn purely from hindsight gained by reviewing the Applicant's disclosure.

As additional evidence that Womack does not contemplate reducing the PPU displayed on the dispenser prior to dispensing fuel, it should be noted that the claimed invention provides limits

on how much fuel can be purchased at the discounted PPU since the amount of the total discount is not known until it is known how many gallons of fuel are dispensed (claims 34, 35, and 37). This method is not taught or suggested by Womack and, in fact, makes no sense in the context of Womack which does not place any limitations on the quantity of fuel that can be purchased.

A thorough review of Stanley indicates that this reference fails to teach or suggest providing a PPU discount on gasoline, generally, and particularly fails to teach or suggest reducing the posted street price on the fuel dispenser, prior to dispensing any fuel, by an amount equal to the PPU difference associated with the customer identification information to arrive at a predetermined PPU for the customer (as recited in independent claims 29, 37, 38, and 40). Paragraph 3 on page 2 of Stanley (which was specifically cited by the Examiner) discloses that the driver accumulates credits on a card each time he purchases fuel at a particular company's station. The only statement in this passage regarding redemption of those credits states, "The card may then be inserted into the apparatus and debited in exchange, for example, for petrol *or other goods or services*." This passage completely fails to suggest anything about a PPU discount. In fact, since the discount may also be applied to "other goods or services" that are not sold in units, the passage suggests that the discount is applied to the total purchase price, and therefore teaches away from the claimed invention.

Paragraph 4 on page 3 of Stanley (also cited by the Examiner) is also devoid of any suggestion of a PPU discount. The only statement regarding redemption of credits states, "When the driver wishes to buy an item (other than petrol), the credits on a card are used toward that purchase either to the value of the item or as a discount, e.g., a £200.00 credit on the card will give the driver a 10% discount." Once again, the statement that the redemption applies to items "other than petrol" suggests that the discount is applied to the total purchase price, not to a price-per-unit. In addition, "a 10% discount" suggests that the discount is applied to the total purchase price, not to a price-per-unit. Therefore, this passage also fails to teach or suggest the claimed invention.

Rejections Under 35 U.S.C. § 102

On page 4 of the Office Action dated September 10, 2001, the Examiner rejected claims 29-41 under 35 U.S.C. § 102(b) as being anticipated by Stanley (PCT Application WO 9118373). The Applicant respectfully disagrees. The fact that Stanley is totally devoid of any teaching or suggestion of a discount on the price-per-unit (PPU) of a commodity, overcomes the Examiner's rejection under 35 U.S.C. § 102(b). Additionally, as noted above, there is not even a suggestion of such a PPU discount in Stanley. In fact, Stanley suggests otherwise: that the discount is on the total purchase price.

Womack also fails to teach a PPU discount that is applied at the time of the purchase to the PPU displayed on the dispenser. On a weekly basis, the system described in Womack calculates a total discount for each company that is equivalent to a discount of two cents per gallon on the total gallons purchased that week. Thus, Womack teaches a discount on the total purchase price that is calculated after the fuel has been purchased.

Independent claims 29, 37, 38, and 40 have been amended to further clarify that the claimed invention reduces the PPU posted on the fuel dispenser prior to dispensing any fuel to the customer. As noted above, this functionality is not taught or suggested by any of the references cited by the Examiner. Therefore, the withdrawal of the rejection under 35 U.S.C. § 102 and the allowance of amended claims 29-38 and 40 is respectfully requested.

Entry of Amendment

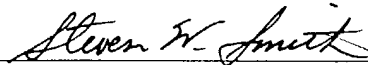
The limitations that have been added to the amended claims were originally recited in claims 39 and 41. Therefore, the amendments herein do not raise new issues requiring further search and/or consideration. Additionally, it was Applicant's understanding that it was agreed in the Examiner's Interview of July 17, 2001 (for the parent case 09/253,275) that the cited prior art, which included Womack and Stanley, did not teach or suggest providing a PPU discount on a consumable good sold in units, such as gasoline. The Notice of Allowability in the parent case seems to confirm this impression. Therefore, in the Applicant's Response to the first Office Action in the present case

(filed August 10, 2001), the Applicant did not amend the claims, but requested their allowance since the claimed method included providing a PPU discount on gasoline which is a consumable good sold in units. Thus, this is the Applicant's first opportunity to respond to the Examiner's contention that a PPU discount on gasoline is anticipated. Therefore, entry and consideration of the foregoing amendment is respectfully requested.

CONCLUSION

For all the above reasons, Applicant respectfully requests the entry of the foregoing amendment, the allowance of claims 29-38 and 40, and the passing of this application to issue.

Respectfully submitted,



Steven W. Smith
Registration No. 36,684

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SMITH, DANAMRAJ & YOUST, P.C.
12900 Preston Road, Suite 1200, LB 15
Dallas, Texas 75230
(972) 720-1202, ext. 229